to do so. Rather, I think that the whole thrust and effect of the order is that it was final division of the property between them equally."

In adopting the reasoning of Bowen C.J., we have given consideration to the fact that in *Public Trustee* v. *Grivas*[17], the decree had been made absolute but we are of the view that his Lordship regarded the court's intention when making an order for the division of matrimonial assets as paramount and the finality of such division should not be dependent on the chance of one party dying first and rendering the result of the order ineffectual.

The remaining issue for determination is whether Chua J.'s decision not to vary the terms of the settlement order was correct. In our view, his decision was correct. His Lordship had no power to vary the settlement order as there is no provision in the Women's Charter which empowers a court to vary such an order. When made, it takes effect like any other court order and may only be varied upon appeal. There was no appeal against the settlement order.

Finally, we have not been persuaded that the learned judge has exercised his discretion wrongly in refusing to vary the terms of the settlement order.

For the above reasons, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Jacob Chacko & Associates; James & Co.*

SEK KIM WAH v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Rajah J. & Chan Sek Keong J.C.) July 10, 1987]

[Singapore – Criminal Appeal No. 11 of 1985]

Criminal Law – Murder – Plea of diminished responsibility – Penal Code, s. 300, Exception 7.

The accused was found guilty by the High Court on three charges of murder and convicted accordingly.

The prosecution evidence was that the accused, together with an accomplice, went to a house in Andrew Road to commit robbery. In the process, the accused killed three of the victims.

The accused accepted the prosecution evidence but relied on the defence of diminished responsibility, both at the trial and in the present appeal.

Held, dismissing the appeal: (1) the verdict as to abnormality of mind is plainly a finding of fact which must be founded on all the evidence, including medical opinion. Even where such medical opinion is unchallenged, the trial judges would be perfectly entitled to reject or differ from the opinions of the medical men, if there are other facts on which they could do so;

(2) in the present case, there was overwhelming evidence on which the trial judges were entitled to make the finding which they did. Not only would it be wrong for the appellate court to disturb the finding, this court in any event did not disagree with the trial judges' finding that there was no abnormality of mind.

Per curiam: It would be pertinent ... to add that the facts on which an expert's opinion is based must be proved by admissible evidence, just like any other fact relevant to the case. The expert's role is to explain to the judge the application of the necessary scientific or medical criteria so as to enable the judge to come to his own judgment by the application of these criteria to the facts proved in evidence.

Cases referred to:

(1) *R.* v. *Byrne* (1960) 44 Cr. App. Rep. 246.
(2) *Walton* v. *R.* (1978) 66 Cr. App. Rep. 25.
(3) *R.* v. *Stefan Ivan Kiszko* (1978) 68 Cr. App. Rep. 62.

COURT OF CRIMINAL APPEAL.

Loh Lin Kok for the accused.

Sowaran Singh (Deputy Public Prosecutor) for the Public Prosecutor.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): The appellant was found guilty by the High Court on three charges of murder and convicted accordingly. He appealed against his conviction.

The appellant had accepted the prosecution's evidence that he had killed the three deceased persons named in the charges against him. The appellant had, however, claimed trial to all three charges, relying solely on the defence of diminished responsibility under Exception 7 of section 300 of the Penal Code.

The unchallenged facts relating to the killings are as follows:

On July 22, 1983, the appellant got together some friends, including one Nyu Kok Meng, and took them to the vicinity of a petrol kiosk at Serangoon Garden Estate, planning to rob the kiosk. The robbery did not take place as the appellant's friends thought the police were following them.

The appellant then decided to go to Marine Parade to commit robbery. Only Nyu accompanied him. On the way, the appellant changed his mind and took Nyu to Andrew Road where he pointed out the house of his former employer, Robert Tay, whom he said they would rob the next morning. This house was at No. 4 Andrew Road.

The next morning, on July 23, 1983 the appellant and Nyu went to Andrew Road and kept observation on No. 4 Andrew Road whilst pretending to repair the appellant's motorcycle. Nyu was armed with a knife while the appellant was armed with a rifle.

When the opportunity came, both the appellant and Nyu rushed into the house. Five persons were then present in the house: Robert Tay, his wife Annie Tay, their maid Jovita Virador, their 10-year old daughter Dawn Tay, and their daughter's tutor Madam Tang. All five were forced into one of the rooms. The appellant then tied their hands behind their backs with raffia strings.

The appellant then began ransacking the house while Nyu stood guard over the victims. After he was through, the appellant was still dissatisfied with what he had found. He demanded a cheque from Annie Tay. Annie Tay wrote a cheque for $5,000. The appellant took the cheque and left the house to cash it, leaving Nyu to keep watch over the victims.

The appellant cashed the cheque and returned half an hour later. He then left the house a second time, this time with Robert Tay. The appellant brought Robert Tay to withdraw a total of $7,000 from the latter's Post Office Savings Bank account. They returned to No. 4 Andrew Road at about 12.45 pm. After Robert Tay entered the room, the appellant again tied his hands behind his back.

The appellant next gagged all five victims. He then led Annie Tay to the master room where he strangled her with raffia string. Annie Tay died from asphyxia due to strangulation.

Half an hour later, the appellant returned to the room where the rest of the victims were held and this time led Robert Tay to the study room. The appellant first strangled Robert Tay with raffia string and then hit him on the head with a wooden stool. Robert Tay died from a fractured skull.

Twenty minutes later, the appellant returned and grabbed hold of the maid, Jovita. He led the maid to the master bedroom and strangled her with raffia string. Like Annie Tay, Jovita too died from asphyxia due to strangulation.

Sometime after this, Nyu left the bedroom where Mdm Tang and Dawn Tay were being held and went to the master bedroom where he saw the bodies of Annie Tay and Jovita. The appellant was then still in the master bedroom.

Nyu then walked to the study room where he saw Robert Tay lying face down on the floor with blood near his head.

At this time, Nyu noticed the appellant walking towards the bedroom where Mdm Tang and Dawn Tay were; he ran past the appellant, entered the bedroom and closed the door. The appellant wanted to kill Mdm Tang and Dawn Tay as well but was prevented from entering the bedroom by Nyu.

The appellant then left the house driving Robert Tay's Mercedes Benz after Nyu told him to escape as he had reported the matter to the police. Nyu then released Mdm Tang and Dawn Tay, both of whom went next door to No. 5 Andrew Road and called the police. In the meantime, Nyu escaped on the appellant's motorcycle. While riding the motorcycle along the main road, Nyu met the appellant driving the Mercedes Benz.

Both the appellant and Nyu then returned to the appellant's room at Bukit Timah. The appel-

lant asked Nyu to fix false number plates on the Mercedes Benz. The appellant also gave Nyu a gold chain and a jade pendant plus $2,000 in cash. The appellant next drove Nyu to the latter's place of work to collect Nyu's passport after which the appellant went to collect his own passport.

The next day, on July 24, 1983 Nyu left Singapore for Malaysia. On August 2, 1983 he surrendered to the Malaysian police and was extradited to Singapore. On July 8, 1985 Nyu pleaded guilty in the High Court for an offence under section 33 of the Arms Offences Act 1973 and was sentenced to life imprisonment and six strokes of the cane.

On July 29, 1983 approximately six days after the gruesome killings, the appellant was arrested.

The defence contended that the appellant was suffering from abnormality of mind during the killings, within the meaning of Exception 7 to section 300, Penal Code.

Exception 7 provides that:

"Culpable homicide is not murder if the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death."

In support of this contention, the defence called two psychiatrists to give expert evidence as to the appellant's alleged abnormality of mind.

Dr. John Ellard gave evidence and stated his opinion that the appellant satisfied the criteria for Anti-social Personality Disorder, as classified in the *Diagnostic and Statistical Manual of Mental Disorders* (3rd Ed.) which is usually referred to as DSM III. This opinion was based on an interview with the appellant on August 4, 1985 in Changi Prison, and on police statements which he had read.

According to Dr. Ellard, Anti-social Personality Disorder was a mental abnormality and the appellant's abnormality of mind arose from his retarded development brought about by the absence of those factors necessary for normal development such as a stable family structure through childhood and adolescence and caring parents who provided not only affection, guidance and the physical necessities of life, but who were themselves satisfactory models for the developing child to follow.

Dr. Wong Yip Chong, the assigned defence psychiatrist, expressed his opinion that the appellant suffered from a Psychopathic Personality Disorder arising from inherent as well as environmental causes. Dr. Wong clarified that in his mind, Anti-social Personality Disorder and Psychopathic Personality Disorder were one and the same thing and were abnormalities of the mind.

In rebuttal, Dr. Chew Seck Kee, Senior Psychiatrist, Woodbridge Hospital, gave evidence for the prosecution. Dr. Chew was of the opinion that the appellant was not of abnormal mind at the time of the alleged offences; there was no evidence to show that the appellant suffered from any mental illness or psychopathic personality disorder. Dr. Chew also gave evidence that the appellant had told him that his main intention was to rob but he had to kill as he was recognized and would be caught.

At the end of the case, after taking into consideration all the evidence adduced, the trial judges came to the conclusion, on a balance of probabilities, that at the time the accused killed Robert Tay, Annie Tay and Jovita, he was not suffering from any abnormality of the mind to enable him to come within the ambit of Exception 7 to section 300 of the Penal Code.

Before us, counsel for the appellant had argued with great perseverance that the trial judges had erred in coming to this conclusion, and that the appellant had in fact suffered from abnormality of the mind when he carried out the killings. Counsel relied extensively on the opinion given by Dr. Ellard and Dr. Wong, and sought to persuade us that the learned trial judges were wrong in rejecting the evidence of Dr. Ellard and Dr. Wong and in preferring the evidence of Dr. Chew.

Having heard the arguments of counsel for the appellant, and having considered the evidence recorded in the verbatim notes as well as the grounds of decision of the trial judges, we were satisfied that the appeal could not possibly succeed, both on the law and on the facts. Accordingly, we dismissed the appeal. We now give our reasons.

The relevant principles of law governing the finding as to abnormality of mind, in cases where diminished responsibility is pleaded, are well settled.

In *R.* v. *Byrne*,[1] the Court of Criminal Appeal held, at pp. 252 to 253, that:

" 'Abnormality of mind', which has to be contrasted with the time-honoured expression in the M'Naughten Rules 'defect of reason', means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment whether an act is right or wrong, but also the ability to exercise will power to control physical acts in accordance with that rational judgment. The expression 'mental responsibility for his acts' points to a consideration the extent of which the accused's mind is answerable for his physical acts, which must include a consideration of the extent of his ability to exercise will power to control his physical acts.

Whether the accused was at the time of the killing suffering from any 'abnormality of mind' in the broad sense which we have indicated above is a question for the jury. On this question, medical evidence is, no doubt, of importance, but the jury are entitled to take into consideration all the evidence including the acts or statements of the accused and his demeanour. They are not bound to accept the medical evidence, if there is other material before them which, in their good judgment, conflicts with it and outweighs it. The etiology of the abnormality of mind (namely, whether it arose from a condition of arrested or retarded development of mind or any inherent causes or was induced by disease or injury) does, however, seem to be a matter to be determined on expert evidence."
(italics added)

Subsequently, in *Walton* v. *R.*,[2] the Privy Council, after considering the cases, said at p. 30:

"These cases make clear that *upon an issue of diminished responsibility the jury are entitled and indeed bound to consider not only the medical evidence but the evidence upon the whole facts and circumstances of the case.* These include the nature of the killing, the conduct of the accused before, at the time of and after it and any history of mental abnormality. *It being recognized that the jury on occasion may properly refuse to accept medical evidence, it follows that they must be entitled to consider the quality and weight of that evidence.* As was pointed out by Lord Parker C.J. in *R.* v. *Byrne* (1960) 44 Cr. App. R. 246, 254; [1960] 2 Q.B. 396, 404 what the jury are essentially seeking to ascertain is whether at the time of the killing the accused was suffering from a state of mind bordering on but not amounting to insanity. That task is to be approached in a broad common sense way."
(italics added)

In our context, the trial judges would assume the role of the jury in making this finding and it is equally clear that the same principles enumerated in the cases set out above apply. Thus, the verdict as to abnormality of mind is plainly a finding of fact which must be founded on all the evidence which evidence of course includes medical opinion. Even where such medical opinion is unchallenged, the trial judges would be perfectly entitled to reject or differ from the opinions of the medical men, if there are other facts on which they could do so. In such a case, an appellate court would not, and indeed could not, disturb their finding (see, for example, *R.* v. *Stefan Ivan Kiszko*[3]) — *a fortiori,* if such medical opinion is challenged and there is conflicting medical opinion in addition to other non-medical evidence.

In the present case, there is, in our judgment, overwhelming evidence on which the trial judges were entitled to make the finding which they did. Not only would it be wrong for us to disturb that finding, we do not in any event disagree with the trial judges' finding that there was no abnormality of mind.

The trial judges had found Dr. Ellard's evidence unconvincing in all the circumstances of the case. Dr. Ellard's opinion was based primarily on his one and only interview with the appellant on August 4, 1985 in Changi Prison and partly on police statements which he had read. The trial judges found that on the evidence adduced in court, not all of the facts relied on by Dr. Ellard were correct.

It would be pertinent at this point to add that the facts on which an expert's opinion is based must be proved by admissible evidence, just like any other fact relevant to the case. The expert's role is to explain to the judge the application of the necessary scientific or medical criteria so as to enable the judge to come to his own judgment by the application of these criteria to the facts proved in evidence.

In this case, Dr. Ellard had agreed with the trial judges that if the appellant had killed in order to eliminate witnesses, then in his opinion, that would not be a psychiatric disorder. However, Dr. Ellard felt that in this case, the appellant had killed primarily to enhance his self-esteem. The trial judges, on the other hand, found on the evidence that the appellant had killed with the sole purpose of eliminating witnesses.

It must be emphasized that the appellant's motive for killing the three deceased is a fact the finding of which is solely within the province of the trial judges. In this respect, we would also note that there was ample evidence to show that the appellant had indeed killed to eliminate identification.

The appellant's brother-in-law, Lau Puay Cheow, gave evidence that when he asked the appellant why he had killed the three deceased, the appellant had replied that he did so because he was afraid of being identified.

Dr. Chew also gave evidence that during his examination of the appellant, the appellant had said that his main intention had been to rob but that he had to kill as he was recognized and would be caught; the appellant had said that it was his life or theirs.

In addition, there was evidence from Inspector Sathasivam, who had earlier recorded a statement from the appellant, that the appellant had told him he killed the three deceased because he was afraid they would subsequently identify him.

Even the appellant himself had in his examination-in-chief said that originally he did not intend to kill but then he was recognized by Robert Tay. The appellant then went on to clarify that as he had been an inmate in the Boys' Home, he could be traced and Robert Tay would identify him.

Dr. Ellard's view that the appellant had killed primarily to enhance his self-esteem was, according to him, evidenced by the fact that the accused boasted about the killings. However, the trial judges had found on the evidence that the appellant might be said to have spoken boastfully about the killings to only one person – Lily Tay, a lounge hostess whom the appellant had befriended.

There was also some reliance on the fact that the appellant had also told Lily Tay that he had been responsible for the killing of a couple whom he had robbed at Marine Parade less than a month before the present murders. This, Dr. Ellard felt, supported his view that the appellant had killed mainly as a form of self-aggrandizement. However, the evidence showed that when the appellant killed the couple at Marine Parade, there was nothing to indicate any self-aggrandizement. Indeed, the appellant had thought long and hard before he killed the couple. Further, the appellant had not mentioned anything about the Marine Parade killings until after the couple's bodies were discovered at Seletar. Until these bodies were found, the appellant had been quite content to keep silent about the Marine Parade murders.

Dr. Wong's evidence was rejected by the trial judges who found that his evidence was not impartial. In addition, the trial judges disagreed with Dr. Wong's interpretation of much of the evidence which he selected to support his arguments.

Dr. Wong had given his opinion that the appellant was suffering from abnormality of mind caused by a physiological sluggish central nervous system which caused him to develop a psychopathic personality by reason of his bad home environment and unfavourable social surroundings. However, Dr. Wong also admitted that this sluggish central nervous system concept was still in the theoretical stage and that the appellant had not been subjected to any tests in this respect because no such tests were available.

The trial judges also felt that Dr. Wong has made no attempt to trace a pattern of conduct to show that the appellant was probably of abnormal mind when he committed the killings. The trial judges also found a significant absence of positive factors relating to the appellant's personality and background in Dr. Wong's report. Dr. Wong's explanation for this was that he did not wish to clutter up his report by mentioning the positive factors as it would weaken the appellant's case.

In our opinion, the trial judges were clearly entitled on the evidence to reject Dr. Wong's opinion which they had found to be of not much help.

Dr. Chew, the prosecution's expert witness, was of the view that there was no evidence to show that the appellant was of abnormal mind at the trial of the alleged offences. Dr. Chew took into account the appellant's history and background and gave his opinion that the appellant had shown prudence and foresight in his actions. Also, there was no sign that the appellant had killed to enhance his self-esteem and, as far as he knew, the appellant had killed to eliminate witnesses.

The trial judges accepted Dr. Chew's evidence, and in our judgment, correctly so, as Dr. Chew's opinion was based on facts consistent with the facts found by the trial judges themselves.

There remains for us to comment on two other points. The appellant had recounted his alleged experience of being strangled and hit on the head when he was in the Boys' Home. He also said that he was re-living this experience as he was strangling Annie Tay. We would note that the trial judges had rejected this alleged ex-

perience as a figment of the appellant's own imagination. The medical evidence as well as the report from the Boys' Home showed that the appellant had injured himself when he fell whilst playing with some other inmates. There was no injury on the back of his head or on his neck.

We would also note that the appellant never raised this incident, and indeed the appellant was uncooperative with even Dr. Wong until after Dr. Wong apprised him of the possibility of a defence of diminished responsibility. This we feel places grave doubt on the defence raised.

For all the above reasons, we dismissed the appellant's appeal.

Appeal dismissed.

Solicitors: *Loh Lin Kok.*

RE J.B. JEYARETNAM, AN ADVOCATE AND SOLICITOR

[O.C.J. (Wee Chong Jin C.J., Chua J. & Chan Sek Keong J.C.) January 12, 1988]

[Singapore – Originating Summons No. 673 of 1987]

Legal Profession – Show cause proceedings – Striking off the roll of advocates and solicitors – Whether exceptional circumstances present – Whether convictions imply a defect of character – Whether capacity in which solicitor acted a criterion for striking-off action – Legal Profession Act (Cap. 161), ss. 80 & 95.

In this case, disciplinary proceedings were taken by the Law Society against the respondent, who was an advocate and solicitor, on the recommendation of the Disciplinary Committee. The respondent was previously convicted of four offences against the Penal Code. Three of the offences were for the fraudulent removal of property and the fourth was for making a false declaration. As a result, the respondend was asked to show cause as to why he should not be struck off the roll of advocates and solicitors.

The respondent raised a preliminary objection that in the circumstances of this case, the Chief Justice should not be one of the three judges. As regards the main show cause action, the respondent contended that there were exceptional circumstances which justified the court to go behind the convictions of the respondent.

Held: (1) section 95(6) which provided that the Chief Justice shall be one of the judges is mandatory;

(2) whether exceptional circumstances exist is a question solely to be determined on the circumstances of each particular case. It is not enough merely to show that no appeal against conviction was available since lack of a right to appear *per se* does not constitute exceptional circumstances justifying re-opening a conviction in the course of disciplinary proceedings;

(3) there were no exceptional circumstances as regards all or any of the four convictions to justify any inquiry into the correctness of the convictions. The convictions therefore stand proved against the respondent for the purposes of section 80(2)(a) of the Legal Profession Act;

(4) in the present case, the offences were clearly of a very serious nature and they involved fraud and falsehood. Each one of the four criminal convictions clearly implied a defect of character making the respondent unfit for the profession within the meaning of section 80(2)(a);

(5) the respondent was ordered to be struck off the roll of advocates and solicitors.

Cases referred to:

(1) *Issac Paul Ratnam* v. *Law Society of Singapore* [1976] 1 M.L.J. 195.
(2) *In Re Weare, A Solicitor* [1893] 2 Q.B. 439.

ORIGINATING SUMMONS.

J. B. Jeyaretnam in person.
Goh Joon Seng for the Law Society.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): In these proceedings the respondent is J.B. Jeyaretnam, an advocate and solicitor of the Supreme Court, Singapore. These proceedings arose from the respondent's convictions of four offences under the Penal Code. The events leading to the prosecution of the respondent are matters largely beyond dispute: they are set out in the various judgments delivered in the course of those criminal proceedings. They are now part of the record before us – see District Court's judgment dated March 30, 1984; Chief Justice's judgment dated April 18, 1985 [see [1986] 1 M.L.J. 133]; District Court's judgment dated April 8, 1986; Lai Kew Chai J.'s judgment dated November 10, 1986. For present purposes, it is only necessary to set out, in chronological order, the charges and convictions which give rise to the present show cause proceedings.

On January 14, 1984, the respondent was tried and convicted by the District Court on a charge